

W.A.(MD)No.17 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.04.2025

PRONOUNCED ON : 29.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.17 of 2023
and
C.M.P.(MD)No.285 of 2023

The District Collector,
Karur, Karur District.

... Appellant

Vs.

A.David Arokiyaraj

... Respondent

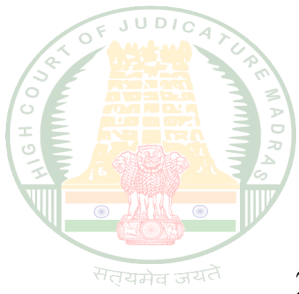
Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.1782 of 2020, dated 08.06.2022.

For Appellant	:Mr.S.S.Madhavan Additional Government Pleader
For Respondent	:Mr.J.Jeyakumaran

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed against the order dated 08.06.2022 passed in W.P.(MD)No.1782 of 2020.

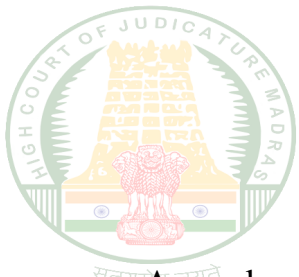


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2. The writ petition was filed for issuance of a writ of Certiorarified Mandamus to quash the order dated 06.01.2020 passed by the respondent and consequently to direct the respondent to reinstate the petitioner in his service with all benefits.

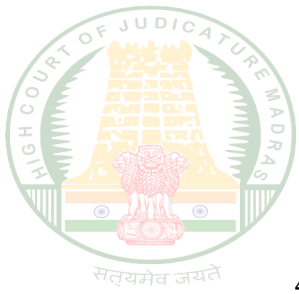
3. The brief facts are that the writ petitioner was employed in Army and after voluntary retirement from Army, he was appointed in the Revenue Department during the year 2011 and on 01.03.2012, he was posted as Revenue Inspector at Tharagampatti, Kulithalai Taluk, Karur District. He served in the Revenue Department for nearly 8 years without any blemish and has not faced any charges during the service. However, on 29.06.2019 the petitioner's 1st wife namely, Roseline Sahaya Mary sent a complaint stating that the petitioner's marriage with her was solemnized on 08.07.2001, they were blessed with two children namely, Clinton Antony and Santhosh, after marriage the petitioner often quarreled with her, ill-treated her and thrown her from matrimonial home on 14.04.2009, then the petitioner did not support financially and did not take care of her and children, thereafter she was appointed as temporary Clerk in District Central Cooperative Bank in the year 2011 and she is working there till date. The petitioner denied some of the allegations and submitted that after retirement from



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Army he was searching for a job and at that time, his 1st wife ill-treated him, deserted willfully along with the children and all his efforts for reunion ended in vain, hence the petitioner filed a divorce petition in I.D.O.P.No.41 of 2011 before the District Judge, Tiruchirappalli alleging desertion and cruelty and the same was dismissed on 30.11.2012 and appeal in C.M.A.No.101 of 2013 before this Court was dismissed on 29.07.2015. The allegation against the writ petitioner is that he suppressed the above said facts and married one Thynish and the same was registered on 17.06.2019. Based on the complaint given by the 1st wife the appellant issued charge memo dated 30.08.2019, which the petitioner received on 05.09.2019, the petitioner submitted reply on 16.09.2019 praying to drop the disciplinary proceedings, but the respondent appointed enquiry officer on 16.09.2019, after enquiry the charges were held proved in enquiry report dated 09.10.2019. Then explanation was called for from the writ petitioner based on the enquiry report vide letter dated 09.11.2019, the petitioner submitted reply on 28.11.2019, memo dated 29.11.2019 was issued calling for personal enquiry, the petitioner appeared on 09.12.2019, thereafter the impugned punishment order dated 06.01.2020 was passed imposing the punishment of removal from service. Aggrieved over the same, the writ petition was filed.



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4. The appellant herein / respondent therein had filed counter affidavit stating that the petitioner was appointed as Senior Revenue Inspector on 01.03.2012 and was serving in the office of Special Tahsildar (Land Acquisition), Ring Road, Karur Unit – 1. The wife of the petitioner namely Roseline Sahayamary submitted a representation, dated 29.06.2019 levelling 12 allegations against the writ petitioner, one such allegations is that the petitioner married another lady and is living with her. As per Rule-19 (1) (ii) of the Tamil Nadu Government Servants Conduct Rules 1973, bigamy by Government servant is prohibited and it amounts to violation of Conduct Rules. Hence, the respondent directed the Revenue Divisional Officer, Kulithalai to enquiry into the matter based on the representation and it reported the allegation as true. Hence the respondent framed charges under 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules against the writ petitioner in Rc.No.A3/10368/2019, dated 30.08.2019 for the allegation of bigamy. After enquiry and based on enquiry report the respondent had passed the punishment order of removal from service, since the charges of bigamy was proved by the following documents:

- i. The preliminary enquiry report of the Revenue Divisional Officer, Kulithalai, in Rc.No.A5/2334/2019 Dt:05.08.2019 on the representation of Roseline Sahayamary, the wife of the petitioner confirmed the bigamy of the writ petitioner.



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ii. The writ petitioner has admitted his 2nd marriage in his explanations, dated 16.09.2019 and 28.11.2019, respectively.

iii. The Inquiry Officer (District Backward and Minorities Welfare Officer, Karur) has confirmed the bigamy of Petitioner in the report Rc.No.M1/15206/2019, dated 09.10.2019.

iv. The Marriage Registration certificate obtained from Sub-Registrar, in marriage Rg.No.91019, dated 17.06.2019, Thargampatty, has also proved the bigamy of writ petitioner.

v. The judgment in the Court of the II Additional District and Sessions Judge, Trichirappalli in No.41/11, dated 30.11.2012 and the Madurai Bench of Madras High Court in C.M.A(MD)No.101 of 2013 and W.P. (MD)No.1 of 2013, dated 29.07.2015, dismissed the prayer of the petitioner with regard to the divorce from his (writ petitioner's) wife.

Apart from the above disciplinary proceedings, the petitioner already faced disciplinary proceedings for the allegation of consuming liquor during office hours and punishment of stoppage of increment for 6 months without cumulative effect was award on 27.12.2017. Another disciplinary proceeding for the charge of misbehaving with staff and public was issued and punishment of stoppage of increment for 6 months without cumulative effect was award on 28.03.2018.

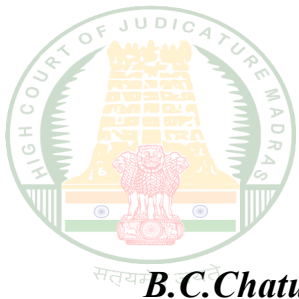


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Another charge was framed in proceeding dated 29.07.2019, charges were held proved but no action could be taken since for the earlier charge memo dated 30.08.2019 for the allegation of bigamy ended in dismissal from service vide order dated 06.01.2020. The appellant contended that the petitioner solemnized 2nd marriage without obtaining divorce and annulling the 1st marriage attracting punishment for bigamy. Further the petitioner consumed alcohol during office hours and misbehaved with the staff and the public and awarded punishment for three times. Further, the petitioner is having appellate remedy to the Principal Secretary / Commissioner of Revenue Administration, Chennai and the same was not exhausted and prayed to dismiss the writ petition.

5. After considering the rival submissions, the Writ Court has held that though Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules provides for a punishment of removal from service for violation of Rule 19 of the Tamil Nadu Government Servants Conduct Rules, 1973, by applying the ratio laid down by High Court of Madhya Pradesh in the case of ***Hem Singh Vs. Union of India and Others*** in W.P.No.1723 of 2007 and by taking a sympathetic consideration of the plight of the family of the second wife, a lesser punishment can be substituted, in line with the decisions of the Honourable Supreme Court in



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B.C.Chaturvedi Vs. Union of India and another as relied upon in ***Hem Singh's case***. The Writ Court quashed the punishment order and directed the appellant to pass appropriate orders imposing a punishment of stoppage of increment for a period of one year with cumulative effect within a period of two weeks. The Writ Court also held that the order shall not be quoted as a precedent for any other case. Aggrieved over the same, the District Collector has preferred the present writ appeal.

6. Heard Mr.S.S.Madhavan, Learned Additional Government Pleader appearing for the appellant and Mr.J.Jeyakumaran, Learned Counsel appearing for the respondent and perused the records.

7. The learned Counsel appearing for the petitioner relied on the judgment rendered by the High Court of Manipur at Imphal in the case of ***Union of India Vs. Md.Zakir Hussain*** in W.A.No.84 of 2009, dated 12.05.2015, reported in ***2015 SCC OnLine Mani 67***, wherein it is held as under:

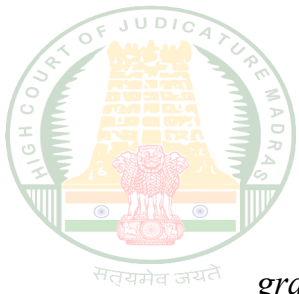
“9. Having heard the learned counsel appearing for the parties at length, we find that the charge levelled against the respondent for taking second wife without obtaining prior permission of the Government is admitted. There is no dispute that under the Personal Law, he is entitled to have more than one wife. It is true that the



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respondent could have more than one wife because of Personal law but he could take a second wife only after obtaining prior permission of the Government. Therefore, taking second wife as a Muslim being permissible under Personal Law the only charge is that prior permission of the Government before taking his second wife was not taken. Learned counsel appearing for the respondent relied on a decision of the Gauhati High Court in the case of Rohit Kumar Bhujel vs. Union of India reported in MANU/GH/0258/2009 : 2010 (1) GLD 102 (Gau). Exactly, under similar circumstances the Court was of the view that the punishment of dismissal from service was excessive and accordingly set aside the punishment of dismissal from service. In the case of Colourchem. Ltd. vs. A.L. Alaspurkar reported in MANU/SC/0096/1998 : 1998 (3) SCC 192 the Apex Court held that if the punishment imposed is shockingly disproportionate to the charges levelled against a delinquent, it may be open to the Court to interfere. Learned Single Judge has relied on the above decisions and referred to the decision of the Hon'ble Supreme court in the case of UP State Road Transport Corporation & Ors.-vs-Mahesh Kumar Linkra and others reported in MANU/SC/0187/2000 : 2000 (3) SCC 450.

10. We have carefully examined the case in the light of the submissions made and conclusions arrived at by the learned Single Judge. Since Personal Law permits a Muslim to have more than one wife, the learned Single Judge was right in holding that not obtaining prior permission of the Government is the only misconduct which has been admitted and proved. Therefore, the learned Single judge was justified in holding that punishment of dismissal from service was shockingly disproportionate to the charge levelled against the respondent. While setting aside the order of punishment, the Court



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granted liberty to the appellants to impose any other appropriate punishment. We find no reason to interfere with the impugned order.”

This Court is of the considered opinion that the above judgment may not be applicable for the present case since in the above case the employee was a Muslim and Muslim personal law is involved.

8. The Rule 19 of Tamil Nadu Government Servants' Conduct Rules, 1973 states that no government servant shall contract marriage with a woman or man, who is having a spouse living. And no government servant shall contract marriage when he or she having a spouse living. In short no government servant shall contract marriage when the first marriage was subsisting. The relevant portion of the rule is extracted hereunder:

“19. Bigamous marriages - (1) (i) No Government servant shall, enter into or contract, a marriage with a person having a spouse living; and

(ii) No Government servant having a spouse living shall enter into or contract a marriage with any person:

Provided that the Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (i) or clause (ii) if they are satisfied that -



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(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(2) No Government servant involve himself in any act involving moral turpitude on his part including any unlawful act, which may cause embarrassment or which may bring discredit to Government.”

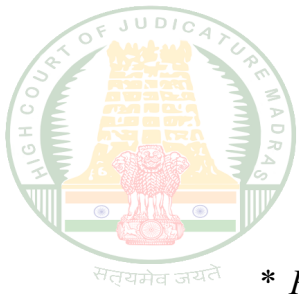
9. If contracted second marriage against Rule 19, then the employer is having power to take disciplinary proceeding and award penalty. Under Rule 8 of Tamil Nadu Civil Servants (Discipline and Appeal) Rules the penalties are prescribed as under:

“8. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon every person who is a member of the civil service of the State and every person holding a civil post under the State specified in rule 2, namely:-

(i) Censure;

(ii) Fine (in the case of persons for whom such penalty is permissible under these rules);

(iii) Withholding of increments or promotion;



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** Provided that the penalty of withholding of increment shall not be imposed on a Government servant, if the said penalty cannot be given effect to fully while in service:*

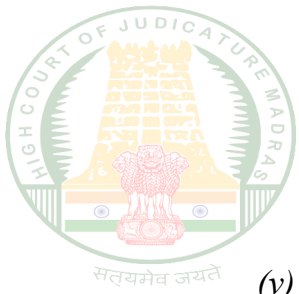
Provided further that in cases where the penalty of withholding of increment cannot be given effect to fully for any contingency that arose after the penalty of withholding of increment is imposed, the monetary value equivalent to the amount of such increments that cannot be given effect to shall be recovered from the person:

Provided also that in cases of withholding of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld shall be recovered.

(vide G.O.Ms.No.113, Personnel and Administrative Reforms (N) Department dated 2.8.2006) (with effect from 2.8.2006)

(iv) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly recruited, whether in the same service or in another service, State or Subordinate, or to a lower time-scale, not being lower than that to which he was directly recruited, or to a lower stage in a time-scale;

Provided that in cases where the punishment of reduction to a lower stage in a time-scale cannot be given effect to fully, the monetary value equivalent to the difference in emoluments as a result of reduction to such lower stage in the time-scale for the unexpired period of the punishment shall be recovered from the person.



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(v) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to any Government Company or Organisation or Local Authority or to a Local Body, while on deputation, by negligence or breach of orders;

(vi) Compulsory retirement;

(vii) Removal from the Civil Service of the State Government;

(viii) Dismissal from the Civil Service of the State Government; and

(ix) Suspension, where a person has been suspended under rule 17(e), to the extent considered necessary by the authority imposing the penalty.

The penalties mentioned in items (i) to (iii), (v) and (ix) shall be deemed to be minor penalties and those in items (iv) and (vi) to (viii) shall be deemed as major penalties.

The penalties mentioned in items (vi),(vii) or (viii), as the case may be, shall be imposed on a Government servant for the violation of rule 19 of the Tamil Nadu Government Servant's Conduct Rules, 1973."

On perusal of the above provisions it is clearly stated that only major penalties stated in items (vi),(vii) or (viii) ought to be imposed for violating Rule 19 of Conduct Rules. In such circumstances, the direction of the Writ Court to impose punishment of stoppage of increment for a period of one year with cumulative

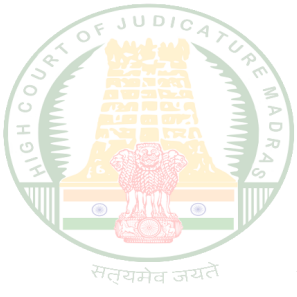


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effect may not be right. It is against the statutory provisions. At the same breath, the punishment of removal from service imposed by the appellant is disproportionate.

10. It is seen that the petitioner's first wife had alleged bigamy and secured job under the Ex-serviceman quota and is serving in the said job. Further she is living separately along with her children. The petitioner is without any job and living separately with his second wife and is having minor child with the second wife. Even though divorce was declined by Courts, it is seen that the parties are living separately for so long years and the marriage has break down. In such circumstances, it is not appropriate to punish the petitioner without any relief. Therefore, it would be appropriate to impose compulsory retirement as punishment, which is prescribed under item (vi) and the same would be as per the statutory provisions. Further the writ petitioner is aged 45 years at the time of filing the writ petition and he is having 10 more years of service. Therefore, it would be appropriate to grant him the same post, but as a fresh entrant. The period from the date of dismissal till the date of fresh entrant would be the punishment for the third charge of drunken mode during office hours.



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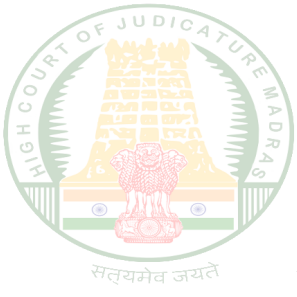
11. Therefore, this Court is passing the following orders:

i. The order passed by the Writ Court setting aside the punishment order dated 06.01.2020 is confirmed. However, the order of the Writ Court imposing punishment of stoppage of increment alone is set aside and the punishment is modified as stated below.

ii. The appellant shall impose the punishment of compulsory retirement by fixing the date as 06.01.2020 and disburse all monetary and terminal benefits applicable to the petitioner.

iii. The appellant shall grant the same job as fresh entrant on or before 30.06.2025. From 01.07.2025 the petitioner is entitled to claim salary and other benefits attached to the service as fresh entrant.

iv. The appellant shall consider the period from 06.01.2020 to 30.06.2025 as punishment for the third charge dated 29.07.2019 and further punishment is not necessary.



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12. With the above said directions and observations, the writ appeal is partly allowed as stated supra. No costs. Consequently, connected miscellaneous petition is closed.

13. This Court with a fond hope that the writ petitioner being an army personal would behave as proper civilian in future is granting the above stated relief. This Court also hope he would become a brand ambassador to create “No Alcohol Bharat”.

[J.N.B., J.] [S.S.Y., J.]
29.04.2025

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To

The District Collector,
Karur, Karur District.



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J.NISHA BANU, J.

and

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